IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5506 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHUPAT VASRAM PANCHOLI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 5506 of 2001

MR ANIL S DAVE for Petitioner No. 1

MS BANNA S DUTTA for Petitioner No. 1

MS. NANDINI JOSHI, AGP, for Respondents No. 1-3

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 9/10/2001

C.A.V. JUDGEMENT

Bhupat Vasram Pancholi-petitioner-detenu has filed this petition praying for a writ of habeas corpus

or any other appropriate writ, order or direction quashing and setting aside the order of detention dated 14.4.2001 passed by the Police Commissioner, Surat City, respondent No. 1 in the petition. The petitioner-detenu has further prayed for his release forthwith.

2. It has been stated in the petition that the Commissioner of Police, Surat City, respondent No. 1 has detained the petitioner under Section 2(c) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `PASA Act') by order No. PCB/DTN/PASA/36/2001 dated 14.4.2001. The respondent has passed this order with a view to preventing the petitioner-detenu from acting in any manner prejudicial to the maintenance of public order in the area pertaining to Varacha Road and D.C.B. Police Station, Surat City. The respondent has passed this order in exercise of power conferred under Section 3(2)) of the PASA Act. Respondent No. 1 has served a copy of the impugned order of detention to the petitioner on 14.4.2001. A copy of the said order has been produced at Annexure-A to the petition.

3. The first respondent has supplied grounds of detention along with documents running into 66 pages to the petitioner-detenu. A copy of grounds of detention dated 14.4.2001 along with the documents is produced at Annexure-C to the petition.

4. It has been alleged in the petition and submitted that it is alleged in the ground of detention that the petitioner-detenu is branded as `dangerous person' within the meaning of Section 2(c) of the PASA Act and therefore the detaining authority has referred to and relied upon four cases under Chapter XVI and XVII of Indian Penal Code registered at Varacha Road & D.C.B. Police Station and the said cases have been shown as pending investigation. In view of the aforesaid circumstances, the detaining authority has based his satisfaction from two statements of witnesses wherein the privilege under Section 9(2) of the PASA Act has been claimed. It is further alleged to the grounds of detention that with a view to preventing the petitioner-detenu from acting in any manner prejudicial to the maintenance of public order, respondent No. 1 has passed the impugned order of detention against the petitioner-detenu.

5. Being aggrieved and dissatisfied with the aforesaid action of respondent No. 1, the petitioner-detenu filed the present petition on 17.7.2001. The court has issued rule returnable on

11.9.2001.

6. The matter reached hearing before me today. The learned counsel Ms. Banna Datta appeared on behalf of the petitioner. She has submitted that in the grounds of detention the detaining authority was required to be subjectively satisfied that the petitioner-detenu was in police custody and he was likely to be released on bail by the competent court on solvent surety in case the petitioner-detenu prefers bail application before the competent court. The detaining authority has further observed that the lesser drastic remedy under Section 437(3) of the Criminal Procedure Code, 1973, is not plausible as the said action consumes more time, but this satisfaction on the contrary shows total non-application of mind in view of the principles and guidelines laid down by the Full Bench of this court (Coram: D.M. Dharmadhikari, C.J., J.N. Bhatt, and P.B. Majmudar, JJ) in the judgement delivered in Special Civil Application No. 9579 of 2000 on 4.5.2001. The learned counsel for the petitioner-detenu further submitted that in the grounds of detention it has been stated that petitioner-detenu has preferred a bail application in the competent court and would be released on bail on furnishing a solvent surety. It is further submitted that `lesser drastic' remedy under Section 437(5) of the Criminal Procedure Code, 1973, is not an efficacious remedy. This means, it is nothing but ipsi dixit (only vague satisfaction and observation of the detaining authority). By stating so, the detaining authority has misled the petitioner-detenu for making an effective representation before the proper authorities and thus subjective satisfaction arrived at by the detaining authority by making lesser drastic remedy under Section 437(5) of the Criminal Procedure Code, 1973, is nothing but total non-application of mind and therefore the impugned order of detention requires to be quashed and set aside.

7. Learned counsel for the petitioner-detenu further submitted that the petitioner-detenu has not been supplied the most important and vital document such as copy of the F.I.R. of CR No. 14/2001, therefore, the non-supply of vital documents amounts to non-communication of grounds of detention, infringing the right of the petitioner to make effective representation under Article 22(5) of the Constitution, rendering the continued detention as bad in law. In support of the same, the learned counsel for the petitioner-detenu has relied on the decision of the Hon'ble Supreme Court in the case of M. AHAMEDKUTTY VS. UNION OF INDIA reported

in (199) 2 SCC 1. In para 16 the Hon'ble Supreme Court has held as under:-

"We have already noted how in the instant case the Home Secretary sent detailed instructions to the Superintendent of Police, Malapuram on June 27, 1988 and sent the teleprinter message on July 19, 1988 and the Superintendent of Police wrote back on July, 27, 1988 stating that the detenu was absconding and his whereabouts were not known and all possible efforts were being made to execute the order and on August 2, 1988 the Superintendent of Police reported that the order was served on August 2, 1988 at his residence and that he was sent to the Central Prison, Trivandrum. Though it could not be denied that the detenu was reporting before the Superintendent (Intelligence) Air Customs, Trivandrum on every Wednesday, the Superintendent of Police, Malapuram apparently was not aware of it. Under the above facts and circumstances we are of the view that there was in inordinate and unexplained delay in the period of 38 days between the detention order and its execution so as to snap the nexus between the two or to render the grounds stale or to indicate that the detaining authority was not satisfied as to the genuine need for detention of the detenu. This submission is accordingly rejected."

8. The learned A.G.P., Ms. Nandini Joshi, for the respondents has tried to support the order of detaining authority in this behalf.

9. In view of the judgement of the Hon'ble Supreme Court, I am of the view that the petition is required to be allowed and accordingly it is allowed. The impugned order at Annexure-A to this petition dated 14.4.2001 passed by the Police Commissioner, Surat City, is quashed and set aside. The petitioner-detenu is ordered to be released forthwith, if he is not required in any other criminal case or proceeding. Rule is made absolute to the aforesaid extent. D.S. today.

(K.M. MEHTA, J)

(pkn)